

Application No. 09/922,651
Amendment dated April 21, 2006
Reply to Office Action of October 21, 2005

REMARKS

Applicant amended claims 1, 2, 5, 9, 12-14, 41, 45, 46, 49, 78, and 82 to further define Applicant's claimed invention.

In the Office Action, the Examiner rejected claims 1, 2, 5, 9, 12-14, 41, 46, and 78 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner objected to the use of the phrases "operable to," "available for," "adapted to," and "may be used." Applicant amended the claims to delete the phrases objected to by the Examiner and to positively recite the elements of the claimed invention. Applicant submits that the Examiner's rejection of claims 1, 2, 5, 9, 12-14, 41, 46, and 78 under 35 U.S.C. § 112, second paragraph, as being indefinite has been overcome.

The Examiner rejected claims 1-22, 41-49, and 60-87 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,226,618 to Downs ("Downs") in view of U.S. Patent No. 6,389,403 to Dorak, Jr. ("Dorak") and U.S. Patent No. 6,718,551 to Swiz ("Swiz"). Under the rejection of claims 1, 2, 5, 9, 12-14, 41, 46, and 78 under 35 U.S.C. § 112, second paragraph, as being indefinite, the Examiner stated that "the terms 'operable to', 'available for' and 'adapted to' may be done but are not required to be done. Therefore, these cannot be regarded as positive limitations in the claims and cannot be relied on to distinguish from the prior art." (Office Action, page 3, paragraph 2). For claim 78, the Examiner stated that "use of the term 'may be used', may be done but is not required to be done. Therefore, it cannot be regarded as a positive limitation in the claims and cannot be relied on to distinguish from the prior art." (Office Action, page 3, paragraph 5). As set forth above, Applicant amended the claims, including independent claims 1, 41, and 78, to replace the phrases objected by the Examiner to positively recite the elements of Applicant's claimed invention. Accordingly, Applicant respectfully submits that the amended phrases in the claims may be relied upon to distinguish over the cited art.

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Applicant respectfully submits that none of Downs, Dorak, and Swix, whether alone or in proper combination, teach or suggest the subject matter of independent claims 1, 41, 60, and 78.

Applicant respectfully disagrees with the Examiner's rejection of dependent claims 15, 64, 72, 73, and 87. Dependent claim 15 recites the system "further comprising an ad manager for targeting advertisements to the consumers." Dependent claim 64 recites the method "further comprising the step of delivering at least one advertisement to the consumer making the request." The Examiner states that "Downs further discloses: further comprising an ad manager for targeting advertisements to the consumers. Col. 70, lines 6-35." (Office Action, page 11, paragraph 1). The passage cited by the Examiner relates generally to verifications. (See Downs, col. 70, lines 4-13). The only mention of "advertisements" in Downs is in col. 85, line 50, which is within a list of functions for the End-User Display 1510. (Downs, col. 85, lines 1-50). Applicant respectfully submits that contrary to the Examiner's contention, Downs does not teach or suggest an ad manager for targeting advertisements to consumers as recited in claim 15, or delivering at least one advertisement to the consumer making the request as recited in claim 64.

Dependent claims 72 and 87 each recite the step of refreshing being "based at least in part on the demographics of members of each selected group of consumers." Dependent claim 73 recites the step of refreshing being "based at least in part on the viewing habits of members of each selected group of consumers." The Examiner contends that "[t]he refreshing of data on each of the selected group of consumers steps would be performed the same regardless of the data" and that "it would have been obvious to a person of ordinary skill in the art at the time the invention was made to refresh data on each of the selected groups with any type of data relating to the customers because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably

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distinguish the claimed subject matter." (Office Action, page 15, paragraph 1 and paragraph bridging pages 15 and 16). Applicant respectfully disagrees with the Examiner's contentions. For claims 72 and 87, refreshing the database based at least in part on the demographics of the members of each selected group of consumers has a direct effect on what content is available for viewing by the selected group of consumers. Additionally, the interpretation of demographic information is objective, not "subjective." Examples of demographic information include age, gender, and geographic location. Refreshing the database based on demographics may be an automated process once the demographics of a selected group of consumers is known.

For claim 73, refreshing the database based on the viewing habits of members of each selected group of consumers involves statistical calculations and is not determined subjectively. The selected consumers will receive content based on viewing habit data. Therefore, the step of refreshing the data would not "be performed the same regardless of the data" as contended by the Examiner. Accordingly, Applicant respectfully submits that the subject matter of claims 15, 64, 72, 73, and 87 are patentable over Downs, Dorak, and Swiz, whether alone or in proper combination.

Applicant submits that independent claims 1, 41, 60, and 78 are patentable and that dependent claims 2-22, 42-49, 61-77, and 79-87 dependent from one of independent claims 1, 41, 60, and 78, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

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